Aboriginal Affairs and Northern Development Canada
Affaires autochtones et Développement du Nord Canada

Report to Parliament

Gender Equity in Indian Registration Act

Canada

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1) Executive Summary

On January 31, 2011, the *Gender Equity in Indian Registration Act* (GEIRA) came into force, amending certain registration provisions of the *Indian Act* that the British Columbia Court of Appeal had found to be unconstitutional in the case of *McIvor v. Canada*. More specifically, GEIRA amended certain registration provisions, thereby newly entitling to registration certain grandchildren of Indian women who lost their Indian status as a result of marrying non-Indian men.

In accordance with GEIRA, Aboriginal Affairs and Northern Development Canada (AANDC) is to report to Parliament, within two years of the coming into force of the Act, on its implementation. As such, this report outlines activities undertaken by AANDC since the coming into force of GEIRA.

Those individuals registered under GEIRA are eligible for all the same benefits and services as other registered Indians. Initial projections were that 45,000 individuals would be entitled to registration as a result of GEIRA. However, it is now anticipated that by the end of fiscal year 2012-2013 there will be approximately 33,000 persons registered as a result of GEIRA, lower than the original projections. This will nevertheless result in ongoing impacts on program and service costs.

To inform individuals who would potentially be eligible for registration as a result of GEIRA, AANDC undertook a series of outreach activities in 2011 and 2012.

To deal with the expected immediate influx of GEIRA applications, a new processing unit was created in Winnipeg dedicated to the intake of applications and to provide an improved service offering. As well, dedicated units were created to deal with complex cases requiring additional research and to handle cases involving adoptions. In total, 55 term and temporary staff members were hired. Staff levels have since been adjusted according to operational requirements.

GEIRA was a focused response to the decision of the British Columbia Court of Appeal in the case of *McIvor v. Canada*. The registration and membership provisions contained within the *Indian Act* have historically been contentious and generated a number of legal challenges and human rights complaints before the courts, the Canadian Human Rights Commission and the Canadian Human Rights Tribunal. GEIRA is no exception, as there are currently five human rights complaints before the Canadian Human Rights Commission and the Canadian Human Rights Tribunal, wherein complainants allege discrimination on the grounds of age, sex and family status. In addition, there are currently 69 protests filed under the *Indian Act* related to entitlement decisions under GEIRA.

2) The *Gender Equity in Indian Registration Act*

The *Gender Equity in Indian Registration Act* amended certain registration provisions of the *Indian Act* that the British Columbia Court of Appeal found to be unconstitutional in the case of *McIvor v. Canada*. In particular, GEIRA ensured that eligible grandchildren of women who lost status as a result of marrying non-Indian men are now entitled to registration (Indian status).

Generally speaking, the key factors that must be considered to determine eligibility for registration under GEIRA are:

- Whether an individual's grandmother lost her Indian status as a result of marrying a non-Indian man;
- Whether one parent is registered, or entitled to be registered, under sub-section 6(2) of the *Indian Act*; and
- Whether an individual or one of the individual's siblings was born on or after September 4, 1951.

On December 15, 2010, GEIRA received Royal Assent, and came into force on January 31, 2011.

3) Demographics

Initial projections prepared for AANDC estimated that approximately 45,000 individuals would become entitled to registration as a result of GEIRA and that approximately 6% of this population would live on reserve. The projections were prepared in September 2009 by an expert renowned in the field of Aboriginal demographics, Stewart Clatworthy of Four Directions Consulting, based on 2004 data from the Indian Register and other sources. His calculations included children born of persons who would be registered under GEIRA.

Since GEIRA came into force in January 2011, however, the application rate has been lower than anticipated. Furthermore, the acceptance rate of applications has been lower than expected (78%), resulting in fewer actual registrations than initially expected when the legislation was passed. This trend is expected to continue into the future. It is now anticipated that by the end of fiscal year 2012-2013 there will be approximately 33,000 persons registered as a result of GEIRA, which is lower than the original projections. There is no deadline for applying so this number is likely to increase over time. Added to the existing base of approximately 872,000 registered individuals, this means that there will be approximately 905,000 registered Indians in Canada by the end of the fiscal year 2012-2013, assuming current registration rates remain steady.

As of October 18, 2012, approximately 2 percent of individuals registered under GEIRA (485 out of 22,536) live on reserve, below initial estimates. Of those registered, the split between the sexes is fairly even, although there were slightly more females than males registered as a result of GEIRA. The average age of newly registered individuals tends to be fairly young, in line with broader First Nation demographics. The three age groups with the largest number of newly registered individuals are:

- the 15-19 age group, with approximately 11.45% of the total GEIRA registrations;
- the 20-24 age group, with 12.48% of the total number of newly registered individuals; and
- the 25-29 age group, with 10.30% of newly registered individuals.

4) Implementation of the *Gender Equity in Indian Registration Act*

i. Communications Outreach

After Royal Assent was received for the new legislation in December 2010, AANDC launched an outreach program to inform people who might potentially be entitled tor registration. A brochure, which included information about who could apply for registration and the documentation that would be required, was widely distributed to the following locations:

- 170,000 homes located in areas of high Aboriginal population concentration, via Canada Post
- Bands and reserves, via Indian Registration Administrators (approximately 500)
- National Aboriginal Organizations (the Assembly of First Nations, the Congress of Aboriginal Peoples, the National Association of Friendship Centres, the Native Women's Association of Canada and the Métis National Council). Brochure packages for these organizations also included a CD with all of AANDC's communications products, such as News Releases, Frequently Asked Questions, etc., so that they could be reproduced as necessary.
- First Nations Offices (619)
- Friendship Centres (126)
- Regional Aboriginal Organizations (230)
- Service Canada Intake Offices (more than 600)
- AANDC Regional Offices

Information regarding how to apply for registration under GEIRA is also posted on the AANDC website.

ii. Special Purpose Allotment Fund

With the passage of GEIRA, supplementary funding was approved for 2010-2011 to 2012-2013, and on an ongoing basis, through a fund referred to as a special purpose allotment. This funding allows for the creation and staffing of the various processing units, technological changes to the Indian Registration System, and the development of new forms and processes required for the implementation of GEIRA.

Special Purpose Allotment Fund for Implementation of GEIRA

	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	TOTAL	Ongoing
Total Vote 1	**5,839,005**	**4,741,141**	**4,529,716**	**94,830**	**89,615**	**15,294,307**	**89,615**
Plus Vote 10 – Grants & Contributions			177,329	346,919	364,593	888,841	364,593
Grand Total Funding	**6,705,000**	**6,221,000**	**6,324,000**	**485,000**	**495,000**	**20,230,000**	**495,000**

The funding profile was based on the initial projected model of applications. However, because the application rate was lower and the expected intake period longer, funding was subsequently re-profiled to reflect the actual needs of the GEIRA process. More specifically, funds were re-profiled from 2011-2012 in the amount of $871,910 to 2012-2013.

In compliance with the terms of the initial submission through which funding was sought for GEIRA registration costs, the funding received was dedicated exclusively for the use of GEIRA registration costs.

iii. Service Delivery

To respond to the initial influx of applications, three dedicated units were created to process the applications. The main unit, the Winnipeg Processing Unit, was responsible for the intake and initial processing of applications. Two specialized units were also created at AANDC headquarters to process complex cases which required additional research or where the applicant or the applicant's parent had been adopted. Approximately 3,900 cases, among the pre-existing inventory of applications that were identified as probable GEIRA cases, were taken from AANDC's Entitlement Group workload and were transferred to the Winnipeg unit for more streamlined processing.

AANDC provided GEIRA applicants with a new, improved one-step service, whereby entitled applicants could apply for both registration and an in-Canada Secure Certificate of Indian Status (SCIS) at the same time. These cards are used to confirm the cardholder's identity as a registered Indian under the *Indian Act*, allowing registrants access to a variety of benefits and services conferred exclusively to registered Indians.

iv. Service Standards

Since February 2012, the processing of GEIRA applications has been within the current service standard of six months for non-complex applications. The Winnipeg Processing Unit is, in fact, currently working with a two-month inventory, thus surpassing the service standard.

Complex cases may have information gaps in the family history or involve an adoption, which requires research and review of information. In particular, in the case of adoptions, this involves dealing with sensitive information available only within the Adoptions Unit at AANDC headquarters. These types of applications account for about 40% of the applications received and can take up to six months to process, which is within the existing service standard.

v. Statistics on Application Processing

As of October 18, 2012:

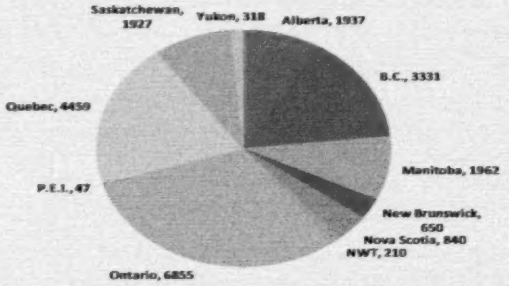
- 31,637 applications have been received
- 29,088 have been finalized (93% of applications received), which include:
  - 22,536 have resulted in the applicant being registered (78% of applications finalized);
  - 4,085 have resulted in the applicant being denied entitlement to registration (14%);
  - 2,467 files (potentially entitled) were closed due to incompleteness and non-response from applicants (8%).

The registration acceptance rate of 78% may increase over time as applicants whose files were rejected or closed for lack of information or response return with further information and are entitled for registration.

The rate of receipt of applications has decreased somewhat since the initial influx of applications after January 31, 2011. By the end of fiscal year 2012-2013, it is expected that approximately 33,000 people will have been registered under the provisions of the GEIRA.

Band Province	Female	Male	Registrations to Date
Alberta	961	976	1937
B.C.	1695	1636	3331
Manitoba	973	989	1962
New Brunswick	335	315	650
Nova Scotia	425	415	840
NWT	114	96	210
Ontario	3542	3313	6855
P.E.I.	19	28	47
Quebec	2258	2201	4459
Saskatchewan	985	942	1927
Yukon	166	152	318
Total	11473	11063	22536

Gender Equity Registrations by Province of Band



5) Benefits & Services Conferred to Registered Indians

New GEIRA registrants are entitled to access the same benefits and services available for all registered Indians. The type of benefits and services that individuals are eligible for depends largely on where they live. Because a large majority of those persons newly registered under GEIRA live off reserve, most of the funding for new registrants is dedicated to non-insured health benefits, available to all who are registered regardless of their residency, as well as to the

post-secondary education program.

Non-insured health benefits, which are delivered through Health Canada, include coverage for prescription drugs, dental care, vision care, medical supplies and equipment, short-term crisis intervention mental health counseling and transportation to access medically required health services not available on reserve or in the community of residence. Post-secondary education funding is provided via First Nations or organizations, which are responsible for administering it, including potentially setting criteria for prioritizing eligibility.

For those newly registered persons who live on reserve, AANDC provides funding to bands for community infrastructure and housing and social assistance. Other benefits include the possibility of federal and provincial tax exemptions through the Canada Revenue Agency, including possible exemption from taxation of income earned on a reserve and property situated on a reserve.

6) Legal Challenges to the *Gender Equity in Indian Registration Act*

Many people anticipated the passage of the GEIRA in the hope and belief that they and their descendants would become newly entitled to registration. However, a number of decisions have been rendered by the Office of the Indian Registrar involving applicants who were found to not be entitled to registration. Some of these individuals have begun litigation based on their position that the criteria of GEIRA are discriminatory. This litigation includes individual actions, class actions, as well as human rights complaints pursuant to the *Canadian Human Rights Act*.

As of January 2013, there are nine court actions that challenge GEIRA, including eight class actions, of which only one is active. Some of the litigation involves claims of discrimination contrary to section 15 of the *Canadian Charter of Rights and Freedoms* concerning: the requirement under GEIRA that the claimant or one of their siblings be born on or after September 4, 1951 to be entitled to registration; the differential treatment of grandchildren (ineligibility to transmit entitlement to the next generation where the other parent is a non-Indian); retroactive access to benefits; and the sibling issue (where one sibling is entitled to registration and the other is not).

Additionally, there are five human rights complaints at various stages at the Canadian Human Rights Commission and the Canadian Human Rights Tribunal, wherein complainants allege discrimination on the part of AANDC on the grounds of age, sex and family status. In four of these five cases, the complainants assert that they were denied registration as a result of their birth date being prior to the 1951 cut-off date prescribed in GEIRA. Another complaint alleges there is continued discrimination in the *Indian Act* because the complainant cannot transmit entitlement to registration to grandchildren if there have been two generations of parenting with non-Indians.

Submissions have also been filed to the United Nations challenging GEIRA and, specifically, that section 6 of the *Indian Act* violates Articles 26 and 2(1) and 2(3) of the International Covenant on Civil and Political Rights.

In addition, 69 protests have been submitted to the Indian Registrar under section 14.2 of the *Indian Act*. The applicants, most of whom have been denied entitlement to registration, have requested a review of the decision by the Registrar. The Registrar, on investigating each protest, will issue a final decision on the protest and the applicant may appeal the decision to a superior court of the province or territory in which the applicant resides.

7) Conclusion

When the British Columbia Court of Appeal rendered its decision in *McIvor v. Canada*, it concluded that certain registration provisions of the *Indian Act* were unjustifiably discriminatory, the application of which resulted in the denial of entitlement to registration of certain descendants of Indian women who lost their status as a result of marrying non-Indian men. The Court's finding of this violation of the *Canadian Charter of Rights and Freedoms* and declaration of invalidity of those offending registration provisions could only be rectified by Parliament through amendments to the *Indian Act*.

The Government of Canada responded to the Court decision with a focused amendment to the registration provisions of the *Indian Act* through GEIRA. The legislation was informed by study and engagement with First Nations and other Aboriginal groups.

The passage of GEIRA entitled certain grandchildren of women who lost their status as a result of marrying non-Indian men to registration. Once registered, these individuals have access to the benefits and services conferred exclusively to registered Indians, including non-insured health benefits, as well as possible post-secondary education funding assistance and certain federal and provincial tax exemptions.

The Government of Canada will continue its work to diligently implement GEIRA, and ensure that all registration applications are addressed in an expeditious manner.